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### An analysis of legal issues relating to navigational rights and freedoms through and over Indonesian waters

Kresno Buntoro  
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**AN ANALYSIS OF LEGAL ISSUES RELATING TO NAVIGATIONAL  
RIGHTS AND FREEDOMS THROUGH AND OVER INDONESIAN WATERS**

A thesis submitted in fulfilment of the  
requirements for the award of the degree

**Doctor of Philosophy**

From

**University of Wollongong**

by

**Kresno Buntoro, SH (Diponegoro, Indonesia), LLM (Nottingham, UK)**

**Australian National Centre for  
Ocean Resources and Security (ANCORS)**

**Faculty of Law  
University of Wollongong**

**2010**



## **CERTIFICATION**

I, Kresno Buntoro, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Australian National Centre for Ocean Resources and Security, Faculty of Law, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The Document has not been submitted for qualifications at any other academic institution.

Kresno Buntoro

3 May 2010



## **ABSTRACT**

The United Nations Convention on the Law of the Sea (LOSC) provides a delicate balance between the interests of archipelagic States such as Indonesia and the international community with respect to navigation. Indonesia recognises three navigation rights and freedoms within Indonesian waters: innocent passage, transit passage and archipelagic sea lanes passage. In addition, Indonesia and Malaysia have negotiated an additional passage right not mentioned in the LOSC called access and communication passage.

The vagueness and ambiguity of the LOSC provisions on navigational rights and freedoms, as well as the absence of further guidance on their interpretation and implementation, have resulted in conflicting claims between Indonesia on one hand and the international community on the other.

This thesis aims to provide an analysis of the legal issues relating to navigation through and over Indonesian waters. In particular, it aims to examine inconsistencies between Indonesian navigational regimes and those permitted by the LOSC to ascertain if Indonesia has applied the LOSC correctly and, if necessary, to propose reforms to harmonise national legislation with international law. Specifically, the thesis will first, explain the extent, historical development and concept of navigational regimes in the LOSC and international law in general. Second, it will analyse the implementation of the navigational provisions of the LOSC by Indonesia. Finally, it will provide recommendations concerning the harmonisation of the Indonesian domestic legal framework with international law.





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## LIST OF ACRONYMS

AALCC	Asian-African Legal Consultative Committee (AALCC)
AD	After Death
ASEAN	Association of Southeast Asian Nations
ASG	Archipelagic States Group
ASL	Archipelagic Sea Lane
BC	Before Christ
Bakorkamla	Badan Koordinasi Keamanan Laut (Coordinating Body for Maritime Security)
DAC	Directorate General of Air Communication
DSC	Directorate General of Sea Communication
DDS	Department of Defence and Security
DFA	Department of Foreign Affairs
DOALOS	Division of Ocean Affairs and the Law of the Sea
DPD	Dewan Perwakilan Daerah (Regional Representative Council)
DPR	Dewan Perwakilan Rakyat (People's Representative Assembly)
Dwt	deadweight tons
ECDIS	Electronic Chart Display and Information System
EEZ	Exclusive Economic Zone
ENC	Electronic Navigational Chart
FIR	Flight Information Region
FON	Freedom of Navigation
GBHN	Garis-garis Besar Haluan Negara (Broad Guidelines of State Policy)
GNP	Gross National Product
GPASL	General Procedure on Archipelagic Sea Lanes Passage
GR	Government Regulation
IAEA	International Atomic Energy Agency
IASL	Indonesian Archipelagic Sea Lanes
ICAO	International Civil Aviation Organisation
ICJ	International Court of Justice
ICS	International Chamber of Shipping
IDC	Inter-departmental Committee
IDR	Indonesian Rupiah
IHB	International Hydrographic Bureau
IHO	International Hydrographic Organisation
ILC	International Law Commission
IMO	International Maritime Organisation
IMSCB	Indonesia Maritime Security Coordinating Body (Bakorkamla)
INTERTANKO	International Association of Independent Tanker Owners
Km	Kilometre
LAT	Lowest Astronomical Tide
LNG	Liquefied Natural Gas
LOSC	United Nations Convention on the Law of the Sea
MEH	Marine Electronic Highway

MLLW	Mean Lower Low Water
MLWS	Mean Low-Water Springs
MOU	Memorandum of Understanding
MPR	Majelis Permusyawaratan Rakyat (People's Consultative Assembly)
MSC	IMO Maritime Safety Committee
MSL	Mean Sea Level
NAV	IMO Sub-Committee on Safety of Navigation
NM	Nautical Miles
OAU	Organization of African Unity
OECD	Organization for Economic Co-operation and Development
PANKORWILNAS	Panitia Koordinasi Wilayah Nasional (Coordinating Committee for National Territory)
PCIJ	Permanent Court of International Justice
PNG	Papua New Guinea
PP	Peraturan Pemerintah (Government Regulation)
Sub-NAV	Sub Committee on Navigation
TZMKO	Territorial Zee en Maritime Kringen Ordonantie (Territorial Sea Maritime Regulation)
UN	United Nations
UNCLOS	United Nations Conference on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNTAET	United Nations Transitional Administration in East Timor
US	United States
USSR	Union of Soviet Socialist Republics
UU	Undang Undang (Act)
UUD	Undang Undang Dasar (Constitution)
UUDS	Undang Undang Dasar Sementara (Provisional Constitution)
WMD	Weapon Mass Destruction

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